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NEW YORK STATE
PUBLIC SERVICE COMMISSION

Petition of New York Telephone Company for Approval of its Statement of Generally Available Terms and Conditions (§ 252) and Draft Filing of Petition for InterLATA Entry (§ 271)	Case No. 97-C-0271

COMMENTS IN RESPONSE TO THE NEW YORK PUBLIC SERVICE COMMISSION STAFF'S DRAFT PREFILING STATEMENT OF MARCH 17, 1998

DATED: March 23, 1998

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INTRODUCTION AND SUMMARY

The New York Public Service Commission staff's "Draft Prefiling Statement" of March 17, 1998 first limiting, then terminating the availability of the unbundled network element platform ("UNE-Platform or "UNE-P") (*see* chart, March 17, 1998 draft p.10), if put into effect in anything close to its current form, will eliminate the hope and promise of the Telecommunications Act for broadscale price and quality competition for residential and small business consumers. The staff's proposal suffers from numerous defects, which we discuss briefly below.

- **In Section I below,** we demonstrate that the staff's proposal is based on fundamental fallacies about the extent and availability of facilities-based competition. The facts upon which we rely are set forth as well in greater detail in the Affidavit of LCI's Director of Local Network Planning, Timothy J. Burke, Exhibit A hereto.
- **In Section II below,** we reiterate our concerns about any possible role of the Department of Justice in pre-approving a Bell company application which has not yet been filed before the FCC, or commented upon by interested parties. Our concern is that the DOJ's views on an RBOC's Section 271 application are accorded "substantial weight" under the statute. In LCI's view, this puts the DOJ in the role of a judge, not a party negotiating a consent decree.
- **In Section III** below, we set forth a few of the most obvious legal deficiencies of this proposal. It is defective on its face Sections 251(c)(3), 251(c)(4), 251(c)(6), 252(d)(1), and 202 of the Telecommunications Act.
- **In Section IV** below, we set forth the most obvious paragraphs which are no more than vague and unenforceable "promises to perform." Again, in LCI's view, the staff proposal is an open invitation to further litigation and uncertainty.
- **Finally, in Section V** below, based on the facts set forth here, we renew our request that the Commission hold genuine evidentiary hearings on the staff's important new proposal first to drastically limit, and then to terminate, the UNE-Platform.

I. THE STAFF'S PROPOSAL IS BASED ON FUNDAMENTAL FALLACIES ABOUT THE EXTENT AND AVAILABILITY OF FACILITIES-BASED COMPETITION

The staff's proposal apparently assumes that full facilities-based competition is available throughout New York City for business customers, and will shortly be available for residential and small business customers throughout the state. Nothing could be further from the truth. *See generally*, Burke Affidavit attached hereto as Ex. A.

First: **Competitive Local Exchange Carriers ("CLECs") today do not serve the majority of New York City's business customers and the vast majority of New York City's residential customers, and there is no reason to expect this to change in the future.**

- Of the 76 end offices in New York City, there is collocation by CLECs in only 15 end offices. Over 1.5 million business lines (56%) and 2 million residential lines (75%) in New York City are served out of end offices where there is no collocation by any CLEC. (Burke Aff., Ex. A, ¶ 4)
- In Manhattan, where CLEC coverage is the broadest, there is collocation only in ten (out of 24) end offices. All end offices in Manhattan with collocation are south of 59th Street and in high-end business districts or high-income residential areas. There are over 500,000 business lines (33%) and 200,000 residential lines (33%) in Manhattan end offices where there is no collocation at all. Most CLECs are concentrated in a handful of end offices in New York City (15) and have virtually no network presence outside downtown Manhattan. (Burke Aff., Ex. A, ¶ 5)
- The presence of a CLEC in a given end office only means that all customers served out of the end office could *potentially* be served by the CLEC. Most CLECs do not have adequate capacity to serve a large market share of all customers in the end offices where they are collocated. (Burke Aff., Ex. A, ¶ 8)

Given their highly limited coverage of end offices in New York City, CLEC networks simply do not reach a significant portion of LCI's.

Second: **Economically and technically, BA-NY's Extended Link offering is not an adequate substitute for the collocation-based strategy to deliver local telephony services to small businesses and residential customers.**

- The Extended Link service imposes considerable charges for transport from the end office serving the unbundled loop to either a CLEC's hub end office (where it is collocated) or its switch location. A CLEC could profitably provide local service using Extended Link only to customers who generate monthly revenues in excess of $100 per line. This eliminates the vast majority of small businesses and virtually all residential customers. (Burke Aff., Ex. A, ¶ 11-12)

- With average (distance-insensitive) pricing, only high-revenue customers could be profitably served by Extended Link. Small businesses and residential customers will enjoy little choice in the local market. With de-averaged (distance-sensitive) pricing,. As with the collocation-based facilities strategy, a CLEC will find that the business case for the provision of local services with Extended Link is justified only in areas with a high density of high-usage customers within a reasonable distance of its hub (collocation site). Small businesses and residential customers will remain unserved by CLECs. (Burke Aff., Ex. A, ¶ 13)
- The Extended Link product severely compromises the quality of service that a CLEC can provide, placing the CLEC at a competitive disadvantage. This extension could decrease the quality of the original voice signal, increase the provisioning and activation interval, and increase the risk of service outage. Isolating the source of trouble when a line is down will require a highly complex, time-consuming, and expensive sectionalization and testing process. It is unreasonable and unwise to impose such complexity on customers reliant on the CLEC's dial tone for 911 emergency calls. (Burke Aff., Ex. A, ¶ 15)

Third: **Reliance on facilities-based CLECs as a Carriers' Carrier is not a viable option for providing local services to either business or residential customers.**

- The most mature CLECs (MFS and TCG) have been acquired by Interexchange carriers ("IXCs") (WorldCom and AT&T) with internal needs far exceeding the capacity of either MFS' or TCG's local networks. Strategically, an IXC has minimal motivation to serve a competing IXC with a local product. Extreme undercapacity characterizes CLEC local networks which are scarce resources commanding huge premiums when sold. Given the expense and time required to build local networks, this will remain the case for the foreseeable future. (Burke Aff., Ex. A, ¶ 15)
- No CLEC has yet to offer a wholesale price sufficient for LCI (or any other reseller) to maintain profitable margins. (Burke Aff., Ex. A, ¶ 21)
- Given the limited coverage of even the most mature CLECs, LCI would have to resell both CLEC and BA-NY services in every market to reach its customer base, since, as in the case of LATA 132, 60% of LCI's long-distance customers cannot be reached through CLEC resale. (Burke Aff., Ex. A, ¶ 13)
- The majority of facilities-based CLECs do not offer switch partitioning or other unbundled network elements. Only the most cash-starved CLECs have been willing to discuss with LCI the sharing of collocation facilities and switch partitioning. (Burke Aff., Ex. A, ¶ 24)

With limited coverage, insufficient discounts, and conflicts of interest between CLEC retail and wholesale operations, CLEC's are unlikely to provie a viable method to deliver local services on a wholesale basis.

Fourth: **The expense and time required to build a local wireline network means that existing CLECs are unlikely to expand their networks and new CLECs are unlikely to build networks to serve most small-business and residential customers in the foreseeable future.**

- The provision of facilities-based competitive local telephony services requires more than purchasing and activating a local switch. The capital expenditures associated with the purchase and activation of a local switch are less than twenty percent (20%) of the total upfront capital expenditures required to build a local network. (Burke Aff., Ex. A, ¶ 28)
- A collocation-based facilities strategy makes business sense only if service is provided from end offices with a large number of potential customers marked by high usage. In other words, such a strategy is economically sensible only in end offices that are located in commercial districts with a significant number of large- and medium-sized businesses. A CLEC could alternatively lease BA-NY transport to connect a customer's building to the its switch. A significant quantity of customer lines and usage, however, is required to justify this service delivery method. (Burke Aff., Ex. A, ¶ 35)

Thus, facilities-based delivery of local services is financially sensible only in highly dense commercial districts. LCI has encountered numerous problems that have delayed its ability to develop and implement an app-to-app EDI interface with BA-NY.

Fifth: **The economics of local wireline networks is inherently different from those of long distance and local wireless networks.**

- Long-distance carriers only need to pick-up or drop-off their traffic to a limited number of tandem locations (after just one) to serve all customers in the entire LATA. To provide local service to all customers in a LATA, including small businesses and residential customers, a facilities-based CLEC must collocate in every end office within the LATA, build fiber to every building, or obtain line-of-sight microwave to every customer premise. (Burke Aff., Ex. A, ¶ 37)
- Long-distance networks are marked by significant economies of scale (declining average costs) and utilize capital resources very efficiently. The transport and switching capacity of a long-distance network is designed to minimize idle time because of the inherently shared nature of these resources. Each additional minute on a long-distance network significantly reduces the per-unit cost of providing long-distance service. (Burke Aff., Ex. A, ¶ 39)
- By contrast, there are non-trivial incremental capital costs associated with local networks not present with long-distance networks in addition to considerable upfront fixed costs. Each additional line on a CLEC's network requires at least $100 in additional capital expenditure associated with line cards either in the digital loop carrier or the switch that convert analog signals to digital. (Burke Aff., Ex. A, ¶ 40)

High incremental capital costs (associated with each new line), acute bottlenecks (such as public and private rights-of-way), and a high share of assets that cannot be shared by multiple customers (dedicated loop) differentiate local wireline networks from long-distance and local wireless networks. These distinguishing features make highly unlikely the proliferation of local wireline networks anytime in the foreseeable future.

Sixth: **As a company with a large share of small-business and residential customers, LCI needs an economically viable Unbundled Network Element Platform ("UNE-P") to provide local services to the majority of its customers in the state of New York.**

- Over half of LCI's commercial customers in the state of New York generate less than fifty dollars ($50) in monthly revenues. Roughly 66% of LCI's residential customers in the state of New York generate less than twenty-five dollars ($25) in monthly revenues. Using a CLEC as a carriers' carrier is not a feasible option to serve of these customers. (Burke Aff., Ex. A, ¶ 43)
- The minimum requirements for an economically viable UNE-P are: unbundled network elements must be set at TELRIC rate, non-recurring charges must be at true cost, the carrier employing the UNE-P must be allowed to charge for access, glue charges should be negligible (if any), no collocation should be required, and there must be true common shared transport capability. (Burke Aff., Ex. A, ¶ 44)
- An UNE-P that meets the above requirements will permit LCI to serve its representative small business and residential customers profitably. Net income then would be roughly four percent (4%) for a typical business customer and one percent (1%) for a representative residential customer. Under the proposal put forth by BA-NY and the Public Service Commission of New York ("PSC"), net income would be minus five percent (-5%) for the average of business customer and minus eleven percent (-11%) for the typical residential customer. (Burke Aff., Ex. A, ¶ 45)

The UNE-P recommended by the PSC virtually precludes LCI from providing a competitive local services option to the majority of its business customers and virtually all of its residential customers.

Seventh: **The limited UNE-Platform with a sunset proposed in the staff's proposal is unlikely to be utilized by LCI (or other carriers its size or smaller), because of the expense of development costs.**

- LCI's development of resale OSS interfaces has been extremely costly and time-consuming. For example, LCI has been working with BA-NY since May 1997 to design,

develop, test and implement BA-NY's resale EDI ordering interface. During these ten months, BA-NY has changed the version of its EDI interface four times. *See* Strombotne Aff., Ex. B.

- While LCI is hopeful that some of the significant problems that it has encountered with BA-NY's resale OSS will be remedied, the process of developing and implementing an app-to-app EDI interface for the UNE Platform will unquestionably represent a significant development effort for LCI. (*see* Strombotne Aff., Ex. B at ¶ 5)
- Significant development efforts would be required to design, develop and implement the OSS interfaces for the UNE-Platform with BA-NY. (*see* Strombotne Aff., Ex. B at ¶ 5)

For these reasons, LCI believes that it is unlikely that carriers its size or smaller will be able to undertake the development costs to utilize the UNE-Platform for the time and geographic markets contained in the staff proposal. *See* Strombotne Aff., Ex. B at ¶ 5.

II. THE DOJ'S ROLE IN FORMULATING OR INFLUENCING THE NEW YORK COMMISSION'S POLICIES SHOULD BE PUBLIC AND ON THE RECORD.

It appears from the face of the Commission's "Draft Prefiling Statement" that the Department of Justice ("DOJ") has played some role in development of the principles of the March 17, 1998 "Draft Prefiling Statement." This is a further reason that the New York Public Service Commission needs to open its process to develop a record with a hearing in which all interested parties may participate. Specifically, the Commission should ask the DOJ, if in fact it wishes to influence or participate in the course of the New York Commission's decision at this stage, to put its views on the record publicly as a participant in an open process, so that those views can be responded to by all interested parties. This is particularly important because the DOJ's views are to be given "substantial weight" by the FCC, and an open process at the New York Commission is essential to a fair evaluation by the FCC of the DOJ's views to it when a Section 271 application is filed

III. LEGAL DEFICIENCIES APPARENT IN THE STAFF'S PROPOSAL

Manifold and serious legal problems are evident from the brief review of the staff's proposal allowed in the time and page limits imposed by the Commission.

Under the staff proposal, [at p.9,] Bell Atlantic would commit only to providing "the complete UNE-Platform to CLECs for service to residential and business POTS customers," as set forth in the chart contained at p.10 of the staff proposal. The chart indicates that both commitments would sunset in three to five years, and would not apply at all for service to business customers in New York City. Serious legal issues are raised by this proposed "commitment:"

- The exclusion of any commitment to provide combinations of unbundled network elements or the UNE platform for service to all business customers in New York City appears to violate not only the non-discrimination requirements of section 251(c)(3). There is no exception that would permit such blatant geographic discrimination in either section 251(c)(3).
- The limitation of the commitment to provide the UNE platform only for POTS to business customers also appears to explicitly violate section 251(c)(3), which requires access to network elements for the provision of any telecommunications service, not just POTS. The Eighth Circuit has agreed that "the FCC's determination that a competing carrier may obtain the ability to provide telecommunications services entirely through an incumbent LEC's unbundled network elements is reasonable..." Opinion, *Iowa Utilities Board, et. al v. FCC, et. al*, No. 96-3321, Court of Appeals for the Eighth Circuit (filed July 18, 1997), page 143. See also comment on page 11, paragraph 3, below.
- The sunset of the commitment to provide the UNE platform appears explicitly to violate section 251(c)(3) of the Communications Act, which requires that an incumbent local exchange carrier [in this case Bell Atlantic] provide non-discriminatory access to unbundled network elements at any technically feasible point. The statute contains no sunset on this requirement.
- The geographic exclusion of New York City appears on its face to violate section 202 of the Communications Act, which states that "it shall be unlawful for any common carrier... to subject any particular person, class of persons, *or locality* to any undue or unreasonable prejudice or disadvantage" (emphasis added). It seems plain that denying all business customers in New York City the opportunity for competitive local exchange service provided by combinations of unbundled elements or the UNE platform to small businesses in other parts of the State of New York violates this statutory requirement.

The staff proposal further states [at p.11, ¶ 1] that "charges for existing [UNE] platforms will be adjusted over a three year period to *equate the platform price with the resale price.*" (emphasis added). In addition, the proposal states that after the sunset of the combinations and UNE platform has occurred, new competitors will be able to get the UNE platform at the resale price for "the longer of two years or whenever the area is deemed substantially competitive." Again, legal deficiencies appear on the face of these proposed provisions:

- Section 252(d)(1) of the Communications Act states clearly that prices for unbundled network elements obtained under section 251(c)(3) of that Act shall be non-discriminatory and based on cost. Section 252(d)(3) of the Communications Act provides that the price of resale services obtained under section 251(c)(4) of that Act shall be a wholesale rate determined by subtracting avoided costs from the retail rate. By changing the cost of the unbundled network element platform to the resale rate, the staff proposal explicitly violates the plain requirements of the statute.
- The staff proposal also violates the clear statutory requirements in sections 251(c)(3) and 252(d)(1) of the Communications Act that the rates for unbundled network elements must be non-discriminatory. As proposed, a new competitor entering the market one year after the sunset of the UNE platform requirement would immediately pay the full resale rate, while a competitor that entered before the sunset would have a different rate for two more years due to the proposed transition from cost-based rates to the resale rate.

The staff proposal goes on to say [at p.11, ¶ 2] that "In New York City, where the [UNE] platform is not available for business customers, Bell Atlantic-NY commits to provide terms for collocation *which are more favorable than those provided in other areas.*" (emphasis added). This proposed commitment on its face would clearly violate the non-discrimination requirements of sections 251(c)(3), 251(c)(6), and 202(a) of the Telecommunications Act.

Finally, the staff proposal singles out [at p.11, ¶ 3] combinations that include a specific unbundled network element, namely the combination of a company's link with a company's port, for a different pricing regime than combinations of all other network elements. This portion of the proposal lacks any statutory or judicial foundation:

- The statute, the FCC, and the Eighth Circuit have all clearly stated that section 251(c)(3) of the Communications Act permits a competitor to determine which combination of network elements it wishes to obtain, and section 252(d)(1) of that Act requires that those elements be non-discriminatorily priced on the basis of cost. This element of the proposal limits what combinations of unbundled network elements competitors may obtain on the basis of cost and is discriminating under Section 251(c)(3).
- Further, the proposal would specifically permit Bell Atlantic to provide the unbundled network element known as a "multiplexer" at either cost based prices or at "the retail price less the wholesale discount" which would appear to violate the statutory scheme established in section 252(d)(1) of the Communications Act.

IV. THE STAFF'S PROPOSAL IS SO VAGUE AS TO BE NO MORE THAN AN UNENFORCEABLE "PROMISE TO PERFORM," WHICH GUARANTEES FURTHER LITIGATION AND UNCERTAINTY

The staff proposal is so vague and important respects as to be nothing more than a "promise to perform" a task which is not even reasonably described. To state just one example, LCI notes on p.11 the following "commitment" by Bell Atlantic.

> In New York City, where the platform is not available for business customers,and in other areas where the platform becomes unavailable, BA-NY commits to provide terms for collocation which are more favorable to requesting carriers than those provided in the other areas. These include, at the option of the requesting carrier, smaller collocation cages, sharing of collocation cages, non-cage physical collocation, and reasonable recombination of elements through virtual collocation.

What are terms "more favorable" to requesting carriers? Why is this considered non-discriminatory? When will these terms be established?

LCI believes that these and other problems in the document demonstrate why the standard procedure set forth in Section 271, of a final application filed by an RBOC, judged by the state commission, filed with the FCC, commented upon by interested parties within 30 days, commented upon by the DOJ within 50 days, with a decision by the FCC within 90 days, is the appropriate and indeed only workable method for judging the complex facts which are inherent in attempting to inject competition into theRBOC's network.

V. LCI REITERATES ITS REQUEST, BASED ON THE FACTS SET FORTH HERE, THAT THE COMMISSION HOLD GENUINE EVIDENTIARY HEARINGS ON THE STAFF'S IMPORTANT NEW PROPOSAL TO LIMIT AND THEN TO TERMINATE THE UNE-PLATFORM

LCI hereby renews its motion for evidentiary hearing on a full record, based on the extensive evidentiary facts it has been able to gather and present in the five calendar days since receiving the staff's proposal on the morning of March 18, 1998. These issues are critical to competition in New York and nationwide. LCI believes the staff and DOJ are proceeding on fundamental fallacies as to the extent and availability of facilities-based competition. These need to be openly aired and litigated before a neutral body, as the due process clause of the United State Constitution requires. LCI believes that the Commission's admirable record in other areas, when it is followed notice and hearing procedures show a strong need for that traditional process to be followed with the new proposal from the staff, first to drastically limit and then to terminate the availability to competitors of the all-important UNE-Platform.

DATED: March 23, 1998

Respectfully submitted,

by CM

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NEW YORK STATE
PUBLIC SERVICE COMMISSION

Petition of New York Telephone Company for Approval of its Statement of Generally Available Terms and Conditions (§ 252) and Draft Filing of Petition for InterLATA Entry (§ 271)	Case No. 97-C-0271

AFFIDAVIT OF TIMOTHY J. BURKE

I, Timothy J. Burke, being duly sworn, do hereby state:

1. I am currently employed by LCI International as Director of Network Planning in the Local Services Division. I have over fifteen years experience in the telecommunications industry and have worked in various positions within network planning, engineering, and network operations. Having worked for NYNEX for almost fourteen years, I am intimately familiar with end offices in both New York City and upstate New York. I also worked for the wireless subsidiary of NYNEX for six years. At LCI International, I am primarily responsible for evaluating facilities-based strategies to provide local services. I am also in charge of negotiating interconnection agreements with Incumbent Local Exchange Carriers and resale agreements with Competitive Local Exchange Carriers.

Exhibit A to LCI's Comments

Section I

Competitive Local Exchange Carriers ("CLECs") today do not serve the majority of New York City's business customers and the vast majority of New York City's residential customers, and there is no reason to expect this to change in the future.

2. Competitive Local Exchange Carriers ("CLECs") today do not serve the majority of New York City's business customers and the vast majority of New York City's residential customers. The available empirical evidence suggests that facilities-based CLECs have focused their facilities development in end offices located in commercial districts with a significant number of large businesses.

3. Based on information provided by Bell Atlantic Network Services on March 5, 1998, collocation has been implemented only in 31 end offices throughout the state of New York. (*see* Ex. A). I assume conservatively that CLECs are collocated in all 31 end offices. Twenty-six end offices with collocation are in LATA 132, which covers the New York metropolitan area. This leaves over 160 end offices in LATA 132 with no collocation. Assuming that 70% of switched access lines in Manhattan and 35% (state-wide proportion) of switched access lines elsewhere in the LATA are business lines, over 2.3 million business lines (63%) and over 3.5 million residential lines (78%) in the LATA can be served only by Bell Atlantic-New York ("BA-NY"). These estimates are based on 1996 ARMIS data that divides all switched access lines in the state of New York by end office (*see* Ex. B).

4. Even within New York City, the coverage provided by competitors collocated in BA-NY end offices is minimal. Of the 76 end offices in New York City, there is collocation by CLECs in only 15 end offices. Over 1.5 million business lines (56%) and 2 million residential

lines (75%) in New York City are served out of end offices where there is no collocation by any CLEC.

5. The broadest coverage is in Manhattan. There is collocation in ten of the 24 end offices in Manhattan, all of which are south of 59th Street and in high-end business districts or high-income residential areas. Even with this broad coverage, there are over 500,000 business lines (33%) and 200,000 residential lines (33%) in Manhattan end offices where there is no collocation at all. Most CLECs are concentrated in a handful of end offices in New York City (15) and have virtually no network presence outside downtown Manhattan.

6. Most of the end offices in LATA 132 outside Manhattan listed by Bell Atlantic as collocation sites are tandem offices. These locations may not be used by CLECs to provide local services but rather to take advantage of cost-effective trunking and interconnection to BA-NY's network for termination and completion of calls.

7. In LATA 132, roughly 60% of LCI's commercial customers are served by end offices with no collocation at all. Almost half of the business lines of LCI commercial customers fall within end offices where no CLEC is collocated.

8. The presence of a CLEC in a given end office only means that all customers served out of the end office could *potentially* be served by the CLEC. Most CLECs do not have adequate switch or transport capacity to serve a large market share of all customers in the end offices where they are collocated. In the New York metropolitan area, CLECs have reached at least 50% utilization of installed switch capacity but they have successfully penetrated less than two percent (2%) of switched business lines. There is speculation that many CLECs are targeting high-volume customers, including Internet Service Providers, who generate considerable terminating traffic that yields reciprocal compensation dollars. The low market

share of CLECs together with high switch utilization means that CLECs will have to make significant additional capital investments in switching, transport, and back office systems to support a sufficiently large customer base that poses a competitive threat to BA-NY in the local market.

9. For the reasons set forth at greater length in Section IV below, paragraphs 27 through 35, it is unlikely that existing CLECs will expand their networks or new CLECs will build networks to serve small-business customers and residential customers.

Section II

Economically and technically, BA-NY's Extended Link offering is not an adequate substitute for the collocation-based strategy to deliver local telephony services to small businesses and residential customers.

10. Economically and technically, BA-NY's Extended Link offering does not correct the problems with a collocation-based strategy to deliver local telephony services to small businesses and residential customers for the following reasons.

11. The Extended Link service imposes considerable charges for transport from the end office serving the unbundled loop to either a CLEC's hub end office (where it is collocated) or its switch location.

12. BA-NY's most recent Extended Link proposal imposes over $27 per line per month (based on statewide average distance), making it virtually impossible to serve the average customer. Adding the allocated cost of any collocation, the allocated cost of back office systems, and the allocated administrative and overhead expenses, a CLEC could profitably provide local service using Extended Link only to customers who generate monthly revenues in excess of $100

per line. This eliminates the vast majority of small businesses and virtually all residential customers.

13. With average (distance-insensitive) pricing, only high-revenue customers could be profitably served by Extended Link. Small businesses and residential customers will enjoy little choice in the local market. With de-averaged (distance-sensitive) pricing, a CLEC will deploy a facilities-based strategy using Extended Link only to serve customers located in end offices close to its hub end office or switch site. As with the collocation-based facilities strategy, a CLEC will find that the business case for the provision of local services with Extended Link is justified only in areas with a high density of high-usage customers within a reasonable distance of its hub (collocation site). Once again, small businesses and residential customers will remain unserved by CLECs.

14. Bell Atlantic has tariffed the Extended Link service for well over a year. The fact that no carrier has yet to order the service strongly suggests that the offering is not economically viable.

15. The Extended Link product severely compromises the quality of service that a CLEC can provide, placing the CLEC at a competitive disadvantage. The Extended Link is essentially a physical extension of the local loop from the originating end office to either the CLEC's hub or its switch site. Technically, an analog signal will be converted to a digital one, the digital signal will be MUXed at least once (most likely two or more times), deMUXed at least once (most likely two or more times), and finally the digital signal will be reconverted to an analog one. This process could decrease the quality of the original voice signal. It will increase the provisioning and activation interval and also increase the risk of service outage. Finally, isolating the source of trouble when a line is down will require a highly complex, time-

consuming, and expensive sectionalization and testing process. It is unreasonable and unwise as a matter of public policy to impose the costs of such complexity on customers who are reliant on the CLEC's dial tone for making 911 emergency calls.

Section III

Reliance on facilities-based CLECs as a Carriers' Carrier is not a viable option for providing local services to either business or residential customers.

16. Reliance on facilities-based CLECs as a Carriers' Carrier is not a viable option for providing local services to either business or residential customers for the following reasons. The most mature CLECs (MFS and TCG) have been acquired by Interexchange carriers ("IXCs") (WorldCom and AT&T) with internal needs (long-distance and ISP services) far exceeding the capacity of either MFS' or TCG's local networks. Strategically, an IXC has minimal motivation to serve a competing IXC with a local product. This is different from wholesale sales of IXCs' long-distance networks that have substantial excess capacity and competition for wholesale sales. Instead, extreme undercapacity characterizes CLEC local networks, which are scarce resources commanding huge premiums when sold. Given the expense and time required to build local networks, this will remain the case for the foreseeable future.

17. Most CLECs also have retail operations that conflict with potential wholesale programs. Sales channel conflicts between the retail and wholesale divisions of CLECs are difficult to manage. For example, when a CLEC adds a new customer-premises building on its fiber network, its retail arm almost immediately follows through with a marketing blitz that for

all practical purposes eliminates the possibility of resale to customers in the building by any wholesale customer of the CLEC, such as LCI.

18. LCI spent considerable time and resources negotiating with one of the nation's most mature CLECs only to discover that the CLEC's prime motivation for offering resale at an appealing wholesale price was to obtain LCI's dedicated access business. The CLEC ultimately retracted its original wholesale prices when it analyzed the retail margins it would forego by putting wholesale services on its scarce and expensive local assets (switch, fiber, collocation cages, digital loop carrier line cards).

19. Since May 1997, LCI has attempted to negotiate wholesale contracts with a number of CLECs. This project has been my responsibility since late July 1997. I have contacted virtually every CLEC and have learned that not a single CLEC has established functional wholesale divisions to support potential resellers. Although some have wholesale divisions in name, they have neither developed the processes and systems nor devoted the personnel required to support wholesale operations. None have developed marketable wholesale products.

20. Two other CLECs that solicited LCI's local business (as a reseller) a year ago have since rescinded their offers. Neither has perfected the backoffice systems needed to support their own retail operations. Both claim significant defects in the provisioning and maintenance of unbundled local loops. Problems associated with unbundled loops are magnified when a CLEC orders large numbers of unbundled local loops. The unavailability of permanent local number portability also impedes successful marketing to existing BA-NY customers.

21. Further, no CLEC has yet to offer wholesale prices that allow LCI to maintain profitable margins. This is so because CLEC resale involves much higher sales, general, and

administrative expenses than both long-distance and BA-NY local resale. To conduct CLEC resale, LCI must hire additional field support staff to survey the customer site and to coordinate the cutover from BA-NY's network to the CLEC's network. LCI must also develop new sales tools geared at targeting customers served out of end offices where the CLEC is collocated. LCI must invest significant resources to train billing, provisioning, and customer-support staff to enable them to develop the systems necessary to support CLEC resale. Such systems must then be built and implemented. Given higher administrative and overhead costs associated with the provision of local telephony services, particularly since most installations involve manual conversion of lines to a CLEC's network, the required discounts should be even higher than both long-distance and BA-NY local wholesale discounts to make CLEC resale minimally profitable.

22. If LCI desires to become a reseller of CLEC services, it will have to invest in new billing and provisioning interfaces to the CLEC. Since separate interfaces will have to developed for each CLEC with which LCI has a resale arrangement, LCI cannot take advantage of any scale economies. The need for separate backoffice systems for each CLEC makes CLEC resale unappealing, especially since the two CLECs with nationwide coverage (MFS and TCG) were acquired by IXCs.

23. The limited coverage of even the most mature CLECs eliminates CLEC resale as an option to serve most small businesses and residential customers. In all cases, LCI would have to resell both CLEC and BA-NY services in every market to reach its customer base, since, as in the case of LATA 132, 60% of LCI's long-distance customers cannot be reached through CLEC resale.

24. The situation for leasing CLEC local facilities is even worse. The majority of facilities-based CLECs do not offer switch partitioning or other unbundled network elements.

Only the most cash-starved CLECs have been willing to discuss with LCI the sharing of collocation facilities and switch partitioning. Doubts about the financial viability of these CLECs make such arrangements highly risky. Further, switch equipment vendors' software and hardware are not currently adaptable to partitioning, since these vendors have little incentive to offer such a feature to their customers.

25. To the best of LCI's knowledge, not a single facilities-based CLEC has yet generated sufficient volume of business to justify their investments by revenue, when depreciation and amortization of their networks is included in their financial statements. This is true because to install even one customer on a local network, a large upfront investment is required to construct a local network. After that investment is made, customers have to be sold and moved to the CLEC network one order at a time. The local telephone business is accordingly volume-based, with volume alone generating the revenues to pay back the investment in the network. While the network is an upfront sunk cost, the volume of customers needed to pay for it can be generated only slowly, over time.

26. Given the high debt load of most facilities-based CLECs and the lack of significant revenues, the major business justification for investment in local facilities appears to be one predicated on being bought by another carrier at a high premium. No long-term business model supports either a stand-alone CLEC retail operation serving residential and dispersed small business customers or a carriers' carrier wholesale operation. The fact that BA-NY has not built a facilities-based CLEC outside its home region (especially in adjacent markets such as Connecticut and Rochester) also suggests that only a buy-out strategy justifies the huge capital investment of building a local wireline network.

Section IV

The expense and time required to build a local wireline network means that existing CLECs are unlikely to expand their networks and new CLECs are unlikely to build networks to serve most small-business and residential customers in the foreseeable future.

27. The expense and time required to build a local wireline network means that CLECs are unlikely to either build new networks or expand existing ones to serve most small-business and residential customers in the foreseeable future. This is so for the following reasons.

28. The provision of facilities-based competitive local telephony services requires more than purchasing and activating a local switch. The capital expenditures associated with the purchase and activation of a local switch are less than twenty percent (20%) of the total upfront capital expenditures required to build a local network.

29. A CLEC considering a facilities-based strategy must also take into account the capital costs associated with (1) the collocation cage at each end office from where the CLEC intends to provide service; (2) the digital loop carrier electronic equipment that must be installed at each end office to convert analog signals to a digital format; (3) the fiber ring that is necessary for transmission of data and voice signals from the collocation cage back to the switch; (4) the electronic equipment associated with the fiber ring and other leased fiber; and (5) the ancillary systems required for billing, provisioning, testing, and customer service. These costs assume the network configuration that CLECs such as MFS and TCG have employed in most cities.

30. The cost of providing facilities-based local services also includes the monthly recurring charges for unbundled local loops from the customer premises to the collocation cage, and the costs of any rights-of-way and space (e.g., collocation space).

31. A facilities-based CLEC must also consider the costs of fiber transport leased from BA-NY that is necessary to carry traffic between its switch and either the end offices where it is collocated or the customer premises. All CLECs rely on BA-NY to some extent in order to carry traffic to and from their customers. There are no truly redundant end-to-end local wireline networks in service today.

32. A few CLECs with microwave spectrum use this technology to minimize the costs associated with leasing fiber and collocation cages. This service delivery method, however, requires line-of-sight between the customer premises and the switch location (or intermediate hub) and faces severe distance limitations (1-2 miles) at the 38 GHz and 24 GHz spectrum being used for CLEC transport. Additionally, obtaining roof rights for microwave dishes is becoming increasingly difficult and expensive in urban areas. Where line-of-sight, distance, or roof rights are binding constraints, even these CLECs must lease fiber transport from BA-NY to carry their traffic.

33. Line-of-sight microwave communications is not technically feasible in most suburban and rural areas because of the lack of tall buildings, and terrain (trees and hills). A large market segment of small business and residences in office parks and suburban areas will not be served by this method.

34. CLECs that have also built Competitive Access Provider ("CAP") networks (fiber directly to large customer premises) do not require collocation cages to serve customers in premises the fiber passes. CLECs typically build CAP networks in dense urban areas. The final segment of access to customer premises from the street is expensive and prohibitively so in many cases. Building owners and managers often either do not allow CLECs access to their buildings or charge a significant fee for access.

35. A collocation-based facilities strategy makes business sense only if service is provided from end offices with a large number of potential customers marked by high usage. In other words, such a strategy is economically sensible only in end offices that are located in commercial districts with a significant number of large- and medium-sized businesses. This basic fact explains the lack of collocation cages in the majority of end offices in New York City and elsewhere in the state (*see* § I above). Alternatively, CLECs can and do lease T1 and DS-3 facilities from the ILEC to connect a customer's building to the CLEC's switch. This service delivery method requires some customer premises equipment ("CPE") owned and served by the CLEC such as digital loop carriers. A significant quantity of customer lines and usage is required to justify the monthly lease costs of the transport facility, the capital for the CPE, and the ongoing maintenance of the CPE. The calculus is unaffected by the ability to purchase switching from BA-NY as an unbundled network element, as long as collocation is required.

Section V

The economics of local wireline networks is inherently different from those of long distance and local wireless networks.

36. The economics of local wireline networks is inherently different from those of long-distance and local wireless networks for the following reasons. The development of competitive long-distance and local wireless networks over the last 15 years does not mean competitive local networks will also proliferate.

37. Many Local Access and Transport Areas ("LATAs") in the country have only one ILEC access tandem. If this is the case, long-distance carriers only need to pick-up or drop-off